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Scott
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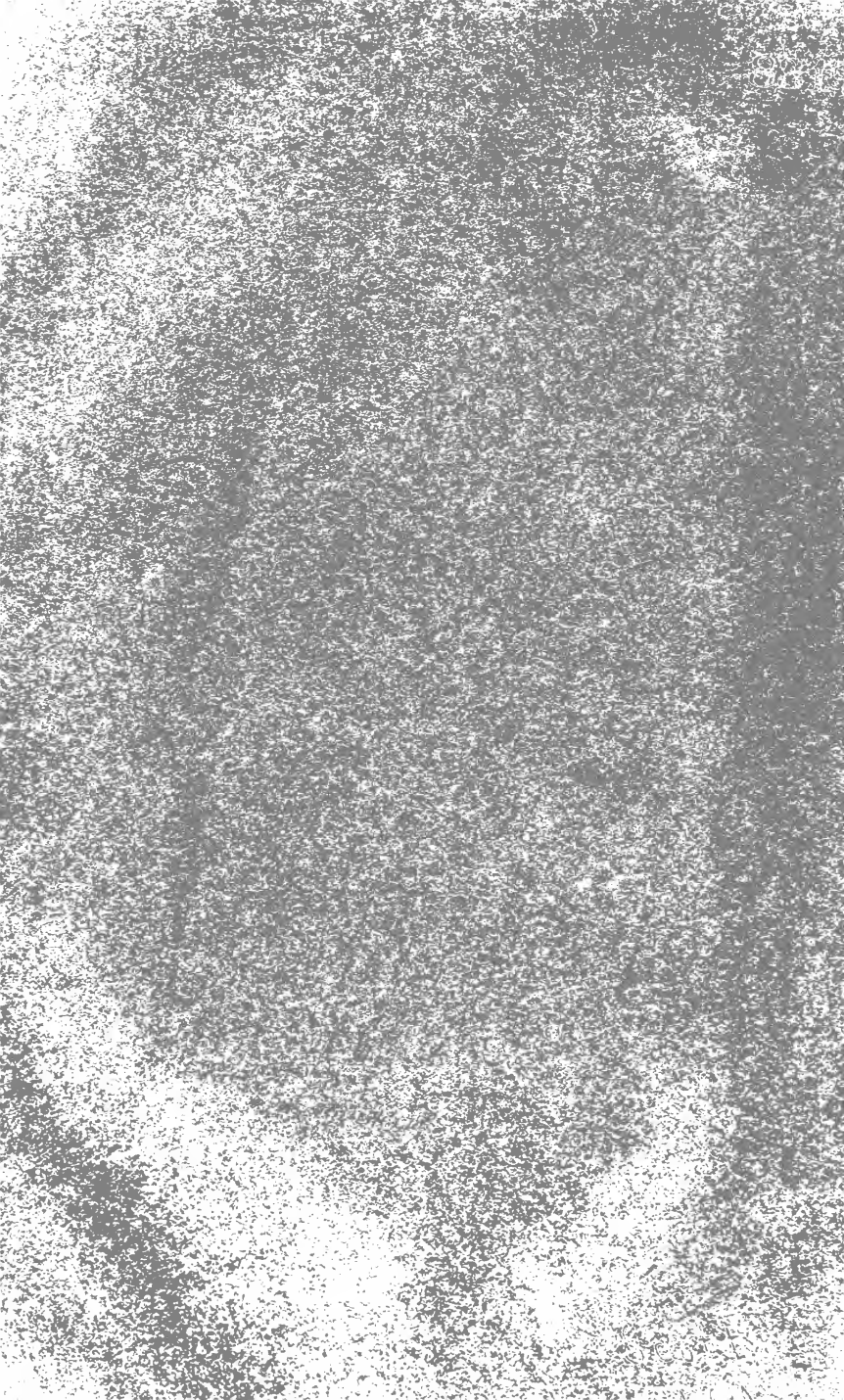

1 Ohm Jersey Lightning Cocktail
2 Ohm [illegible]
3 Ohm Jersey Potato, Hot

Joseph Warren

COL. SCOTT'S LETTER,

TO

JUDGE NEVIUS, MR. LUPP, AND MR. WOOD,

OF

NEW-BRUNSWICK,

ON THE

CONSTITUTIONAL ORGANIZATION

OF THE

LEGISLATIVE COUNCIL

OF

NEW-JERSEY,

OCTOBER 1841.

TRENTON:
PRINTED BY JUSTICE & MILLS.

1842.

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Gentlemen,—The communication referred to in your note of yesterday, was designed by Col. Scott, as he informed me, for publication in the "Somerset Whig," that his own constituents might be advised of the position taken by him, as a member of Council, at their first sitting, and the reasons by which he was governed. The paper, however, has been extended to such a length as to make it inconvenient to be published in a single number of that paper, he has therefore consented that we should comply with your request, and accordingly send you a copy of his communication.

Yours truly,

To Messrs. Cassedy, Lilly, Wall, and Potts.

January, 1842.

—

COL. SCOTT'S LETTER.

New Brunswick, December 11, 1841.

Gentlemen,—I cannot refuse to comply with the request contained in your note of the 8th instant.

You desire that I shall state to you, in familiar narrative, the material events which recently occurred in Council, together with my views and opinions upon those questions, which you are pleased to observe have excited so much attention.

It was well known, prior to the meeting of the legislature, that we should be equally divided in Council. Some publications had appeared in the newspapers, intimating a doubt whether that portion of our house, who assume to themselves the name of democratic, would assemble with us; and whether, therefore, a Council could lawfully be organized—and it was, in peremptory terms, asserted, that we had full authority to organize without them; that, by the letter of the constitution of 1776, seven members were declared to be a quorum; that the governor was the constant president of the Council, and that he could officiate in organizing seven into a quorum on the day designated in the constitution for our assembling. And

it was further added, that if it should so happen that the whole number of councillors (18) should meet, then that Governor Pennington had authority to be present, to preside and to give a casting vote.

All this was urged again and again in the newspapers, and, of course, excited no little attention and conversation. It was very evident, to the prudent and discreet, that these newspaper publications ought not to have appeared—that they advanced pretensions altogether novel in the history of our state, and entirely at war with the jurisprudence of New Jersey. No matter how high or how lofty was their origin or paternity, it appeared to many candid and judicious men that the editors ought to have interfered, and suppressed the articles. They could not but be the germ of discord and much evil; and it was very apparent that they put forthclaims which are not only extremely difficult, but absolutely impossible, to substantiate.

I am pained to add, that the plan proposed in these offensive and ill-judged publications met the decided and warm approbation of Governor Pennington; and that the doctrines and claims contained in them were assented to, and concurred in by every whig member of the Council, except myself, on the evening of Monday preceding the fourth Tuesday of October last.

I resisted them *in limine*—I remonstrated against them with, perhaps, too much warmth, but certainly with zeal and fidelity. I insisted that we must organize ourselves; that, from the nature and spirit of our institutions, and from the direct command in the constitution, the Council, like the House of Assembly, was, and ought to be, a self-organizing and independent body, and that no officer or person other than themselves should take any part in that act; that such authority never had been exerted or claimed by any governor of New Jersey since the Revolution; that no Council had ever acknowledged such claim of power, and that it would, and ought to be, resisted with vigour and determination; and, finally, that the question, whether, *in extremis*, seven of the Council might meet and form a quorum, ought not now to be raised; that it was imprudent, inexpedient, unnecessary, and improper.

On that subject, I chose to give no definitive opinion. It is a question grave and important, and by no means free from embarrassment; although the strong impression of my mind is, that it requires a majority of the whole Council to form a quorum for any purpose of legislation or any other definitive acting, except as a privy council. Very many reasons tend to this conclusion, but I forbear to discuss the subject.

The fourth Tuesday of October arrived, and on the morning

of that day, a full Council appeared in the council chamber. After some conversation and consultation, in one of the committee rooms adjacent to the council chamber, it was ascertained that the nine democratic members of Council had departed; and, as it is unusual to organize until the afternoon, we deferred all action until that time. Some person remarked, that Governor Pennington was in the council chamber; but I cannot say that I saw him there that day. I hope the remark proceeded from mistake. I hope he was not there.

We met again in the afternoon. The eighteen councillors were sworn into office, and we appointed our customary officers. I do not remember that anything else very material was done that afternoon, and we adjourned till the next morning. I did then believe, and I do now believe, that, if the ordinary and lawful course had been pursued, there would have been no difficulty; that the joint-meeting would have taken place during the first week of our session, and that none of that exciting discord which afterwards ensued would have jarred our councils.

In the evening of that day, I saw each of the whig members of the Council. They again expressed their opinion, that the governor had the lawful right and authority to come into the Council, preside over us, and give a casting vote.

Against this opinion I felt unutterable disgust, and no slight degree of indignation. I strongly dissented, in all respects, and I stated my objections in the most distinct language.

It was with astonishment that, on the next day, I saw Governor Pennington assume the chair of the president of Council. The usual message from the House of Assembly had been received the preceding evening, announcing that they were ready to go into joint-meeting, for the purpose of appointing a governor, and requesting Council to appoint the time and place. A resolution had been offered, and then lay on the table, agreeing to the joint-meeting, and fixing the time and place. Another resolution, also, lay on the table, for the adoption of the rules of Council. They were the same rules which had prevailed for several successive years. A question arose, with respect to the right of priority, between these two resolutions. Governor Pennington, acting as the president of Council, decided in favour of the former, and that the latter must yield precedence. An appeal was demanded from the decision of the chair.

It was with real grief that I saw the position assumed by Governor Pennington, and I abstained from saying one word, until it became absolutely necessary for me to act. I then deeply regretted, and I now regret, that he thought it expe-

pedient to assert an authority never before asserted in New Jersey. I thought it unwise, indelicate, and improper. I knew that it was unlawful, contrary to all precedent, and to all experience, and that it amounted to a direct attack upon the independence of one branch of the legislature of our state. The path of duty and of honour lay straight before me; on that subject there was no room for hesitation or doubt. Deeply, indeed, do I lament that any of my brethren were so blinded by the mere wantonness of party, as to forget, or tamely to surrender their rights as councillors, and to yield *to an usurpation which our fathers would have scorned, which the laws forbid, and which mocks the very spirit of independence.*

But the appeal was demanded, and Council must now act.

Immediately before the question on the appeal was about to be put, I rose in my place, and stated my opinion. I could give my assent to no vote of Council, except a vote to adjourn, while the chair was filled by one who had no legal or constitutional right. I was, of course, required to deliver an argument. It was unwritten and impromptu; unprepared in dress, manner, and style; but, unprepared as it was in language and in method, I offer no apology for its substance or its matter. It was, and it is, the decided conviction of my understanding. It was the lesson of truth and liberty, taught me in youth, and it was matured in manhood.

I thought, and I still think, that the governor's term of office is a political year, and not a calendar or astronomical year; and that begin, from various causes, when it may, it always ends with the day preceding the fourth Tuesday of October annually.

Governor Pennington took a very different view of the matter. He insisted that he was elected into office on the 30th October, 1840; and that, being elected for a year, his office must continue till the 30th October, 1841. In nice calculation, he said, a question, and a grave one, might arise, whether he was not entitled to the gubernatorial chair until twelve o'clock at night of the 30th October, 1841.

It is impossible to convey to you an adequate idea of the ineffable scorn felt, or pretended to be felt, at the suggestion of the political year, as contradistinguished from that marked out in the calendar. It was hooted, ridiculed, and derided. It was pronounced senseless, unmeaning, a novelty unheard of, and a fiction; although it is the familiar and universal principle and rule in all our township, city, county, and state elections. Small wit and buffoon jests were played off with all the pertness of impudence and folly. The small fry of small lawyers assumed the lion's skin, and brayed most valorously. The pettifoggers

of high, as well as of low degree, in most grave and solemn aspect, looked portentous things—and the boisterous laugh of assured victory was confidently anticipated.

The triumph was premature.

I do not mean to say, that Governor Pennington, or any member of the Council, so far forgot his dignity, as to indulge, if it be an indulgence, in such silly and boyish remarks and conduct. Far from it. He was grave, attentive, and courteous, except on one single occasion.

You perceive that he totally disclaimed the idea of the political year, and that he claims to be entitled to a full year by the calendar, *and nothing more.* He relies upon a mere verbal criticism, or the language of one single phrase in the constitution.

This is the precise point of dissonance between the governor and myself; and the only question is, which of us have given to the constitution the sound and practical interpretation.

A motion was made to adjourn, which prevailed by ten votes against eight; and they are recorded in the journal.

Immediately after the adjournment, an onset was made upon me, which I do verily believe is without a parallel.

It continued, with unabated violence and constantly increasing acrimony, until such an adjournment took place, that no one could be found so very a slave of power, so humble a tool of party, as to contend that Governor Pennington had any longer a right to the presiding seat in Council.

The very respectable members of Assembly from my own county, at whose instance I cannot say, took it for granted that I was in error, and assailed me with no little severity, and even asperity.

They condemned the course I had taken, with a promptness and decision, that I own surprised me. They entreated me not to sacrifice the whig cause and interests. They almost reproached me as abandoning the principles of my life.

I am now astonished how I bore with patience such a profusion of censure. But I had, and still have, for each of them the highest esteem and respect. We had acted together for a long time in perfect concert and harmony. I knew that they were faithful, just, and true. They were as profuse and warm in their expressions of friendship, attachment, and respect, as they were decided in their condemnation of my vote. They augured every thing that is ill—they prophesied the most grievous calamities.

Messages were despatched in various directions, to induce my personal and political friends, and others to interfere, to persuade, to threaten, or to awe me into submission.

In my own native city an excitement was artificially produced by falsehood and folly. Many of my true and good friends, whom I love and honour, were for the time misled by the tales of malignity and spite.

The peace of my family was invaded: and my near relations, those allied to me, by the ties of nature, and the bonds of affection, became alarmed—and were induced to add their entreaties, that I would yield, and no longer resist the will of all my brother whigs of the Council.

I was even threatened—one dastardly ruffian, more brutal it seems than his fellows, proposed personal violence. The proposal was not rejected; it was only postponed.

This threat from a source so despicable—from such a compound of pale, trembling cowardice and concentrated malignity, was urged *while I was at a distance.*—It could excite no emotion, save that of contempt, unmingled contempt. Every rising feeling of indignation was absorbed in disdain.

It was scorn indeed; but *patient* I can scarcely call it.

The public press was let loose upon me.

Editors have felt themselves authorized to revile and abuse me. I was slandered as a traitor—I was calumniated as a deserter from whig principles, and as unfaithful to the laws and constitution—I was charged with the supposed crime of voting against a joint-meeting. And all this, and much more, they published abroad to the world with as much earnestness and gravity as though they were really publishing some truth—whereas in truth and in fact no such question was presented to our deliberations.

The real question was of higher order, and one involving principles of the deepest interest, and consequences the most momentous.

The question was not, as has been falsely pretended, shall there be a joint-meeting, to-day, to-morrow, or next week? It was not whether Governor Pennington, or any other, shall be elected or rejected.—It was not one of import so ordinary or so insignificant. No! The question was distinctly, shall *we the Council of the state* permit an unauthorized intruder to preside over us? or, in other words, shall the independence of the supreme Council of New Jersey be defended and preserved, or shall it shamefully be abandoned? shall we, the members of that Council, with paricidal and sacrilegious hands strike to the heart of our ancient institution the treasonable and murderous blow? Shall we do this, and dare to call ourselves the whigs of New Jersey? Toryism, in its rankest form, has not had the audacity to devise such an outrage.

Anonymous scribblers and witlings, who have clearly evinc-

ed by their writings that their knowledge of the constitution, and of the principles of constitutional law is too contemptible for criticism, have had the effrontery to pronounce definitive judgment.

The township of Franklin, the place of my birth, and the home of my whole life, was declared to be in mass opposed to the principles I had avowed, and solicitously anxious that I should yield. Yes, it was thundered in my ears that even Franklin was chained to the car of power—that Franklin had repudiated the principles of the constitution and of justice—that she was wedded to the miserable time-serving truculent policy of perfidy and falsehood. It is too much.—The grossness of the slander showed that it was impossible.

I was told that Somerset, faithful old Somerset, the home of freedom, independence, and fidelity, would condemn me; and that her voice on that subject was undivided.

Letters came pouring in upon me from various quarters. Some of them honestly and with just purpose urging and advising me to yield. But more, *in bad faith requiring compliance*, and giving me to understand that my *popularity* depended on the event.

I was visited by individuals, and by committees.

I know not how to describe to you the widely varied, and strangely contradictory views and considerations urged.

By some it was seriously proposed, that I should *only* be *silent* and *passive*, and make no objection.

If Council, said they, shall be equally divided, and if Governor Pennington shall choose to act an unlawful part, and give a casting vote, not being entitled to it, the responsibility of this must rest with him and not upon you. His conscience must answer it, not yours.

You perceive that this proposal rests upon the admission that I was right in all my positions. It acknowledges him to be in error, and that he had no legal right to the presidency of the Council.

It solicits me to take no notice of it; the fault is altogether his; and all that I have to do is, to shut my eyes and take no part.

It is amazing that strong, vigourous and even well balanced minds will satisfy and deceive themselves by such miserable fallacious sophistry, when the *end* proposed to be attained corresponds with their *wishes* and *desires*.

I could not help asking, does not *this amount* to a *surrender* of the *independence of Council?* and can I submit to that, as an upright independent and honourable man?

It is not to be forgotten that we were then equally divided

in Council. Our opponents were equal to us in number and in power; and justly entitled to the same authority with ourselves. Could I as a just man, fearing God and hating iniquity, and oppression, consent by a trick, a pitiful trick, unlawfully to deprive them of that equal power and authority, with which the laws had invested them? Can whig principles meanly connive at such a despicable larceny?

The ethics or code of morals, which, in sober seriousness can justify this, cannot easily be startled at any profligacy. The individuals who propose it, are not aware of the enormity of the consequences. The principle is corrupt. It justifies all fraud, trick and deception. I am very far from imputing to either of the proposers such obliquity of principle.

What shall we think of the moral principle of that man, who will say to himself, *I will not commit the highway robbery, I will not perpetrate the midnight burglary;* but I will *sit still* and *silent* and *passive*, and I will with a smile of approbation *silently* acquiesce. I will even make profit of the crime.

The principal felon, and the accessory *before the fact*, are equally guilty in the eye of all law; and the same punishment justly awaits them both.

Some others, a little better read in Shakspeare than the bible, and conforming their notion of morals to a standard rather of poetry than truth, earnestly prayed me that I would

"Do a little wrong to effect a greater good."

You can easily imagine that I could made no reply to this.

It surely requires no reasoning to prove, that we have no more right to the use of unlawful or unjust means, to attain a desirable end, than we have to produce a forbidden result, the use of lawful means.

No device, however subtle, can justify either one or the other. This is as well a moral as a logical truth. We may *not* "do evil that good may come."

It is not a little remarkable, that not one of the great multitude who were brought to exercise an influence over me, ever for one moment attempted, or even pretended to argue the subject; or to convince me that I was in error upon the constitutional question. They have urged, entreated, and almost threatened; but no one has even yet attempted, to show the slightest fallacy in my reasonings, or that my deductions were other than conclusive. They seem to be agreed in this, that I am *somehow* in error; but no one has as yet attempted to show in what that error consists.

They had been told that the whig cause was in danger; and some of them believed it. They became alarmed, but they did not trouble their understandings so far as to inquire what the

danger was. With the blindness of fatuity, and in the madness of party rage, they ceased to remember the dictates of honour, duty and integrity; and they loudly required that the restraints of conscience, oath and intelligence, should all be disregarded.

All this was gotten up; and manifestly for effect.

The vindictive persecution is still active, and most malignantly persevering. Whatever was the original intention, its undisguised purpose now is, to render me personally odious, and to fasten upon me the imputation of some of the worst passions that can rankle in the human breast.

It required no extraordinary share of sagacity to imagine the corrupt and malignant sources of such a crusade.

It was taken for granted that I could not withstand an array so formidable.

That I felt the shock severely I do not pretend to deny.

I could not be insensible to the strongly expressed desire of the friends I love and cherish in my heart's core. I could not but be moved by the agitating entreaties of my affectionate family.

To be the unresisting target for the squib or the scurrility of that *mendax infamia* of the press, which coins at its pleasure, false facts, and falsely imputes dishonourable motives, is far from desirable.

I could not descend into a controversy with these vile assassins of reputation. *They have but followed their bidding—verily they shall have their reward.*

The writers and the editors "have taken the wrong way." "All such attempts are vain. I will do my duty unawed." The approbation of the wise and good is a sweet consolation in the diversified fortunes of human life. The sympathies of those kindred spirits, with whom the goodness and mercy of Almighty God have surrounded and blessed us, sweeten the cup of sorrow, elevate our joys, and soften the pressure of calamity and affliction. "I wish popularity, it is true; but it is that popularity which follows; not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends, by noble means. I will do not that which my conscience tells me is wrong, to gain the huzzas of thousands. I will not avoid doing what I think is right, though it should bring upon me the whole artillery of libels—all that falsehood and malice can invent, or that deluded credulity can swallow. *Ego hoc animo semper fui, ut invidiam, virtute partam, gloriam, non invidiam, putarem.*"

I have before mentioned the difference between Governor Pennington and myself in construing the constitution of this

state. I need not repeat to you, that it is wide, radical, and not to be reconciled. The only question, therefore is, which of us has given to it the sound and just interpretation.

The constitution of New Jersey is the constitution of the Revolution. It is the oldest written constitution in the world, made *eo nomine* by any people for themselves. This venerable charter contains in itself a *declaration of independence.* It declares that the government is dissolved; and that all civil authority under the crown of Great Britain is for ever at an end.

In this interesting emergency, the freemen of New Jersey spontaneously elected representatives to a Provincial Congress, and directed them to organize a government, to the end, *that liberty shall be preserved, justice administered,* the *commonwealth defended,* and the *invading foe repelled.* It is a proud record in the history of our state, that her declaration of independence preceded that of the United States.

It was at this eventful period, and under circumstances so interesting and exciting, that the constitution of New Jersey was framed and adopted. It was adopted on the second of July, 1776. It established a new government, and it ordains—

1. The government shall be vested in a governor, legislative council, and general assembly.

2. The Legislative Council and General Assembly shall be chosen, for the first time, on the second Tuesday of August next; and shall be, and remain vested with all the power and authority of any future legislature, until the second Tuesday of October, 1777.

3. On the second Tuesday of October, 1777, and on the second Tuesday of October, yearly and every year thereafter, the counties (*then in number thirteen, but now being eighteen*) shall severally choose one person to be a member of the Legislative Council, and at the same time shall choose three members of the General Assembly.

4. On the second Tuesday next after each election the Council and Assembly shall *separately* meet.

5. The consent of both houses shall be necessary to every law; and no law shall pass unless there be a majority of all the members of each house personally present and agreeing thereto.

6. Each house shall, in all respects, be an independent branch of the legislature of this state.

7. The council and assembly, jointly, at their first meeting after each annual election, shall, by a majority of votes, elect some fit person to be governor for one year, who shall be constant president of the council, and have a casting vote in

their proceedings; and the Council themselves shall choose a vice-president, who shall act as such in the absence of the governor.

8. The governor, or, in his absence, the vice-president of council, shall have the supreme executive power, be chancellor and ordinary, captain-general, and commander-in-chief.

I believe that I have quoted every word of the constitution that can directly or remotely bear upon the questions then raised.

You perceive that I have abridged several of the sentences and sections, but it is in such parts only as refer to other subjects.

The principles here set forth are plain, practical, and easily understood.

The election of the legislature, in both its branches, shall be annual.

The annual term of the members of the council and assembly shall be from a certain specified Tuesday in one year, to the corresponding Tuesday of the same month in the next year.

In other words, their annual term shall be a political year, and not a calendar year.

The political year may be longer, or may be shorter, than the calendar; but the latter shall not be the term. The election of the governor shall be every year, by this annual legislature; his appointment shall proceed from them, in joint-meeting. Necessarily, therefore, there must be a council and assembly, before there can be a governor. He shall, when elected, preside in the deliberations of that council who have just taken part in his election, and it is only in his absence that the vice-president, appointed by them solely, shall take the chair.

It is in direct reference to this council, and this assembly, who jointly shall elect him, that it is said he shall be constant president of the council.

The council is not a permanent body. They are not, in this respect, like the Senate of the United States.

Their term and time of office is precisely the same as that of the assembly.

The dissolution, or virtual death of the council, effectually destroys the presidency of the governor over them. The governor, by reason of his election this year, is the constant president of the sixty-fifth Council of the state of New Jersey; or, to use language more in accordance with the style of the day, the governor is, by reason of his recent election, the constant president of the Council of the sixty-fifth legislature of the state of New Jersey. But by what magic influence it is,

that such election can make him the president of the sixty-sixth Council, I am altogether unable to understand.

I might here appeal to any candid, intelligent, and dispassionate man, and ask him, if he can read that section of the constitution, which authorizes and directs the appointment of a governor, and then extract from it a different meaning.

The Council and Assembly shall elect a governor, who shall be constant president of the Council. What Council? can any man in his senses hesitate for an answer! It is the same Council—it is that Council who have just acted in his election—and not another.

Ingenuity and sophistry cannot torture this language, so as to make it convey a different meaning. It is one Council, and not two, over which the governor is authorized to preside.

The principle running through these various provisions, all harmonizing with each other, is so obvious and clear that every sound head will perceive that it carries its own internal evidence. With one who has no turn to serve; who has no real or imaginary interest in perverting the plain meaning of language; who is a sincere inquirer after truth; it is impossible that there can be the smallest doubt or ambiguity.

The seventh section of the constitution, which I have copied verbatim, contains the only express authority for the election of a governor.

The legislature *shall* meet on the fourth Tuesday of October, annually.

When met, their right and their power to elect a governor are mature and perfect: not only is it within their right and power, but they are commanded to do it at their first meeting.

They have, then, the right to appoint a governor on the first day, nay the first hour, of their session.

Does not this clearly establish that, by the terms of the constitution, there is on that day a vacancy in the office of governor? If not, we may have two governors at the same time. Nobody will pretend that there can be a prospective election. Every tyro knows that such things can take place, only, in cases expressly provided for. A pretence or evasion so bald as that, would shame an argument. No man, in the least degree versed in legal or juridical questions, can be deceived by a sophism so flimsy—no man can be deceived by it, who is not previously resolved to be deceived.

It was ordained that the first legislature under our constitution should assemble on the fourth Tuesday of August, 1776; and they did meet on that day. *They* were the whigs of the Revolution—*they* were unawed by power—*they* did not submit to usurpation. They asserted their rights, and defended

them against every aggression. They elected their governor; and *his* political year and *theirs* was about *fourteen* months. The constitution further ordains, that every succeeding legislature shall meet on the fourth Tuesday of October. If, then, they are commanded to meet on the fourth Tuesday of October—if they are further commanded to elect a governor at their first meeting—who can be so dull or so stupid as not to perceive that they have the lawful power and right to elect the governor on the fourth Tuesday of October, annually?

If this be not so, then they are both *authorized* and *commanded* to do that which it is *unlawful* to do. This is a contradiction and an absurdity.

That each succeeding legislature must have the same power and authority, is too plain and too palpable to admit of a moment's doubt.

This is saying, in other words, that the governor's annual term is a political year, and not a calendar year: and that therefore it must have always a definitive, precise termination, which the *legislature can neither abridge nor enlarge.* A term without a definite termination, is a solecism in language.

The governor's term, therefore, cannot be vibratory. It cannot depend upon legislative will, whim, or inaction; and there cannot be any other precise, definite termination, than that marked out in the constitution itself; namely, the time when the subsequent legislature are required to meet, and that is on the fourth Tuesday of October, annually.

Present this subject in another light.

It has been shown, and it is surely past all peradventure, that the legislature have the lawful power and right to elect a governor on the fourth Tuesday of October, unless some lynx eye can find a clause or provision in the constitution, declaring that they shall not have a joint-meeting on the first day of their session. He who can find this, must have extraordinary vision indeed, for

> "Optics sharp he needs, I ween,
> Who sees which is not to be seen."

Let it be supposed, for the sake of argument, that the legislature having an undoubted right to elect a governor on the day of their assembling, neglect to assert their right and perform their duty, and postpone their joint-meeting for a month, and then elect their governor; will any sane man say, that their negligence, their obstinacy, or their folly, shall have augmented their rights, and that thereby they are enabled to encroach upon the lawful authority of their successors? Is such a position at all tenable? Does not its monstrous absurdity shock our sense of right? Neglect, omission, delay, may

cause the loss of rights, but they never can be pleaded to their gain.

Should any apologist for the governor, being rather easy tempered than scrupulous, here interfere and say, as every man of good sense must say, *I give up as wholly untenable the claim for the calendar year. That I acknowledge must be abandoned. That cannot be the the term nor the test. The year political is and must be the true test.* But may it not be computed from the first joint-meeting of one legislature to the first joint-meeting of the next legislature; and if that be admitted, the governor's right to preside in Council may be considered as continuing until the actual assemblage of the joint-meeting.

This is astute and shrewd: and it presents the only possible apology that it is even plausible. But plausible as at first sight it may appear, it is unfounded in truth and sound reason; and it serves only to protract the death of the claim for one moment longer.

We have seen that the constitution manifestly contemplates the appointment of the president of the Council, by the joint act of the two houses of the legislature. It steadily keeps this in view as a cardinal principle. It commands it, in express language. It prohibits any infraction of this command by distinct injunction.

There is no one principle of the constitution shown forth in more bold relief than this: that no person or officer shall be the president of the Council, but by the consent of both branches of the legislature.

The House of Assembly may, by their own authority, and their sole act, elect their speaker; but the presidency of the Council shall emanate from no source inferior to the joint act of both branches. Council may appoint a vice-president, but they shall not elect a president, except with the concurrence of the other house. This plainly means the existing houses; those in authority at the time being; or it can have no meaning at all. It surely can have no reference to those whose office has passed away—who are defunct and dead. A precedent legislature could not impose a president on their successors even by direct statute; for it is contrary to fundamental principle. Much less can they do it by mere vote.

It is radically wrong; it would mar the harmony of the system. It would unjustly and unlawfully encroach upon the legislature.

It might for a time fasten upon our branch a president utterly distasteful to both; and it surely sets at nought that high command, and that ennobling principle which pervades the whole.

Let me suppose a case, for the sake of argument. It might easily occur; and the converse of it has actually occurred.

I will imagine the Council to be equally divided; one half the members are in favour of re-electing the governor; and the other half are as decidedly opposed to his re-election.

I will suppose that the majority in the House of Assembly, opposed to him, is so large, that no reasonable man can doubt, but that his rejection is certain. In this posture of affairs, a message is received from the House of Assembly, announcing that they are ready to go into joint-meeting, for the purpose of appointing a governor.

In Council, the vote is taken upon the resolution; and the nine councillors who are opposed to him, vote for the joint-meeting; the nine who are disposed to retain him, vote in the negative.

The Council being equally divided, the governor being in the chair, gives the casting vote in the negative; and it is decided that they will not go into joint-meeting.

The governor, by the force of the argument which I am combating, holds over, and continues in office until the actual assembling of the joint-meeting. His political year, says the apologist, does not expire till that event. That event, he may be active to prevent; and he shall be the governor for another year, without election, in despite of a majority, and contrary to all law, right and propriety.

Can it be conceived, that the fair, and just, and honourable construction of the constitution of New Jersey, may lead to effects and consequences so absurd and so preposterous? Can a result so disgraceful, and so criminal, legitimately flow out of the provisions of that venerable charter? Can good sense impute to it a meaning so alarming and repulsive? A sense so pregnant with disgrace and shame must be indignantly rejected.

Will the candid apologist disown these humiliating and alarming consequences? Nothing is more certain then, than that he must reject the principle out of which they flow. If the principle be espoused, the consequences are necessarily invited.

The political year of the constitution is fixed and definite.

It *shall* not and it *cannot* depend upon whim or caprice, on culpable negligence, or upon crime. It *may* begin on the fourth Tuesday of October annually. It *may* extend from that day, including it, to the fourth Tuesday of October in the following year, excluding that day. It *must* end with the day preceding the fourth Tuesday of October. These *termini* are its remotest boundaries. This is the whole of time that it is in the power of any legislature to give—more than this is intru-

sion and usurpation—more than this ought not to be desired—more than this can never be endured.

And yet in the face of all this, and more, the governor contends, that by the terms of the constitution, he was elected for a year; that he was chosen into office on the 30th October, 1840, and that he is therefore entitled to the seals till the 30th October, 1841: that is to say, he contends for the calendar year, and rejects the year political.

This construction cannot be maintained. It cannot be carried through. It is dangerous and oppressive in practice. It is false in theory. It is repugnant to various parts of the constitution. Sound reasoning rejects it. It involves us in contradiction and absurdity. It inverts every rule of law, justice, and sound criticism.

If we examine the history of the government of New Jersey, we shall find precisely that construction given to the constitution for which I have contended—and this too, by every legislature, with the assent of every governor, from the adoption of the constitution to this day.

Governor Livingston was the first governor of the state of New Jersey. He was elected under the existing constitution, and of course he was elected for a year; for it neither knows nor acknowledges any other election.

He was elected 31st August, 1776. He continued in office, under that election, until the succeeding legislature assembled, on the fourth Tuesday of October, 1777. The wise men, the patriots of that day, the whigs of that legislature, many of whom had been members of the convention, and formed and adopted the constitution, could not doubt. They adopted that reading which comported with obvious intention; which ran parallel with good sense and propriety, and which carried through a *paramount principle too plain to be mistaken.* Not a man among them was so *out of his senses* as to imagine that the term of Governor Livingston was the term of a calendar year. Not a doubt existed on the minds of those intelligent and devoted fathers of the republic, but that his term of office was for a political year; whether it overran or fell short of the calendar. They examined the constitution, and ascertained beyond all question that it terminated when the succeeding legislature should meet—and at that time he was re-elected into office. Did the legislature of New Jersey at that trying time desert whig principles? Was Livingston, too, a traitor to his faith? He was regularly elected till the year 1789 inclusive; sometimes before the calendar year had expired, and sometimes afterwards; the political year being in every instance the test.

In the year 1790 he died, and in October of that year Governor Paterson was elected. He was re-elected in the autumn of 1791. In the spring of the year 1792, he was appointed to the bench of the Supreme Court of the United States, and, on the 23d May of that year, he resigned the office of governor.

On the 3d day of June, 1792, Governor Howell was elected, and, on the 25th October following, he was re-elected.

Here let me ask, if this was not another plain, direct, and decisive declaration, by the Council, by the Assembly, and by the governor, (for all must have concurred in the act) that the governor's office was for a term; and that the term expired with the annual meeting of the legislature. Did Governor Howell tell the legislature of that day—"*Gentlemen, I was elected for a year—I was chosen into office on the third day of June*, 1792, *and I hold my office by the terms of the constitution till the third day of June*, 1793? *Did he talk to them of a nice calculation, by means of which he would be authorized to hold the seals till midnight of the third of June*, 1793? Did he talk about raising a grave question upon such a foundation? or was the gallant Howell cowardly or treacherous? Did he fear to assert his rights? Did he, too, desert whig principles? or was the legislature of that day cursed with the spirit of grasping usurpation? No! he was not a dastard nor a traitor —he was no deserter from whig principles. He well knew that such was the constitution of the commonwealth; universally known, received, and acted upon from the very beginning.

The event shows that Howell was the favourite of the legislature. They intended that he should have the high honour of presiding over the destinies of New Jersey *at* that trying and critical period. But they told him that his *term* was out—his *political year* was ended, and they re-elected him.

He continued to be re-elected every succeeding autumn, without the slightest regard to the calendar year, till October, 1801.

On the 31st October, 1801, Governor Bloomfield was elected. In October, 1802, the joint-meeting was equally divided between Bloomfield and Stockton; and John Lambert, the vice-president of Council, performed the duties of governor for that year.

On the 26th October, 1803, Governor Bloomfield was again elected, and he was regularly re-elected at each autumnal session till October 1812—and this again without the least regard to the calendar year. Very often did the elections take place before that had expired, and about as often afterwards.

October 25th, 1812, Governor Ogden was elected, and in October, 1813, Judge William S. Pennington, the father of the

present governor, was elected the governor of New Jersey; and he was again elected in 1814. Some time during that term he was made district judge; and, in October, 1815, Governor M. Dickerson was elected. He was again elected in 1816. On the 23d day of January, 1817, he was elected to the Senate of the United States; and, on the 1st day of February following, he resigned the office of governor. February 6, 1817, a joint-meeting was held, and Governor Williamson was elected. In the following October he was re-elected.

How is this fact again to be accounted for? In no possible way, but by giving to the constitution exactly the construction for which I have contended; and for which I have, by wicked means and contrivances, been compelled to endure so much obloquy and unmerited blame. Was Governor Williamson elected for less than a year? No, he could not be. There is no authority to elect for either more or less. More is not confided to the electors; less they could not exercise.—There is no authority given for *ten* or six months. It is for the *term*, whether much or little, more or less. It is all the period of time over which, for this purpose, the legislature have any control.

Let me ask again—Did not Governor Williamson know his rights? Was that sound lawyer and profound jurist, ignorant of constitutional principles? Did he, too, submit to have nearly one half his term of one calendar year, curtailed by legislative usurpation? Did the legislature do more or other than their predecessors had uniformly done? The legislature of 1776–77, the whigs of the Revolution, told Governor Livingston—*You were elected for a year;* but it was not a *calendar year.* It was the political year marked out in the constitution. It extends from August, 1776, to October, 1777. In like manner, the legislature of 1792 said to Governor Howell—Your election, by the constitution, was for a political year, and it extends from June, 1792, till the October of the same year. It is all of time in our power to bestow. In 1817, the proceedings of the legislature, when put into language, speak precisely the same thing. We have seen that all this received the unqualified approbation of Livingston, of Howell, of Bloomfield, and of Williamson; and its principle was acquiesced in by every other governor. Governor Williamson was regularly re-elected each following year, until the 30th October, 1829.

On that day General Garret D. Wall was elected. On the 2d November, he, by letter, declined the appointment, and, on the 6th of the same month, Governor Vroom was elected.

He was re-elected governor on the 29th October, 1830.

How is this again to be accounted for? Was the calendar

year out? It commenced on the 6th November. Did Governor Vroom, also, forget or desert, or abandon his rights? Was he ignorant or dastardly? Was the legislature presuming? Did they usurp an unlawful authority, or any to which they were not fairly entitled? Governor Vroom was again re-elected on the 29th October, 1830, and again on the 28th October, 1831. On the 26th October, 1832, the joint-meeting elected Governor Southard. This was before the expiration of the calendar year of Governor Vroom; so that he was actually turned out before the expiration of his calendar year.

On the 23d February, 1833, Governor Southard was elected to the Senate. He resigned the office of governor on the 27th of that month, and, on the same day, Governor Seely was chosen.

On the 25th October following, Peter D. Vroom was elected!

Here is another decision, ruling the same uniform principle. The same rule of action is again applied. Had Governor Seely's calendar year expired? Far from it; not eight months had run round—not even was the calendar year expired for which Mr. Southard was elected, if he was elected for a calendar year at all. But the term was out. The political year was ended; and therefore the legislature, on the 25th October, 1833, elected Governor Vroom to the office, as they had a lawful right to do. He was elected regularly, in each successive year, till 1836, inclusive. On the 28th day of October, in that year, he was elected, and declined the appointment. On the 3d November, 1836, Governor P. Dickerson was elected.

On the 27th October, 1837, and before Governor Dickerson's calendar year had expired; seven days before it had expired, Governor William Pennington, the present incumbent, the very man who now *disclaims* and *scorns* the political year, and claims that marked out in the calendar, this same Governor Pennington, was elected into office, to the exclusion of Governor Dickerson.

On the 26th October, 1838, Gov. Pennington was re-elected.

On the 25th October, 1839, he was again re-elected.

On the 30th October, 1840, he was re-elected.

Here it is most undeniable that, according to the principles of construction assumed by the governor; and for which he vigorously contends, there was a vacancy in the office from the 25th October, 1840, till the 30th October, in the same year.

He was elected into office on the 25th October, 1839. He claims, he says, the year by the calendar, and *nothing more.* Of course, then, he being the judge, his office terminated on the 25th October, 1840. And you may give him, in the bar-

gain, all the benefit of that *nice calculation*, which might extend his term unto midnight.

If his doctrine be correct—if the calendar year be the test, and not the year political; then it follows that his term of office expired two days before the meeting of the legislature. They assembled in the year, 1840, on the 27th day of October. The fourth Tuesday of October, that year, came on the 27th day of the month. In this interim, then, between the 25th October, 1840, and the 30th October of the same year, how came Governor Pennington to act as chancellor? How can he justify the orders, decrees, and injunctions which he says he made during that period?

Charibdis
Dextrum Scylla latus, lævum implacata,
Obsidet.

The legs of the lame are not equal.

On the 2d November, 1841, he was once more re-elected. I have been thus particular in stating the times and dates of the several elections to the office of governor, that we should be under no mistake.

Look at it—examine it critically—and I greatly err if you do not perceive that one uniform principle, and but one uniform and unvarying principle, has guided and governed our governors, councillors, and Assembly on this subject, from the year 1776 to the present day.

Shall I superadd to all this mass of evidence, the very message from the House of Assembly itself, sent up to us on the first day of the session, according to usual and unbroken custom. It announced, that they were ready to go into joint-meeting for the purpose of choosing a governor, and they requested Council to appoint the time and place.

They were *then* ready to act—not, they would be ready by some future day,—they *then* were ready.

The message speaks a language very intelligible. It says, we are commanded, by the constitution of New Jersey, to elect a governor at our first meeting. *The time has arrived.* We, the Assembly, are ready to do that act which it is our duty to do, and which is required of us. We, according to ordinary urbanity, submit it to you, the Council, to appoint the hour and the place to perform this high, and commanded duty —*we, the Assembly, are ready to act.* They could not be ready to act, unless it was lawful to act. It could not be lawful to go into joint-meeting, for the purpose of appointing a governor, unless the office of governor was then vacant.

This was the message from the House. It could not be misunderstood. It was not misunderstood. The resolution offered

in Council, and which every whig member was desirous of supporting, speaks the same language, and acknowledges the same principle. Thus, every whig member of Council, who who professed himself ready to support this resolution, has, *unwittingly* perhaps, pronounced the same decision.

The conclusion is irresistible. It cannot be denied, nor can it be evaded. The claim which Governor Pennington now sets up to the calendar year is novel in itself—it is not sustained by any just reasoning—it is repugnant to all analogy and sound principle—it is at war with all history and all experience—it is in direct contradiction even to his own conduct and action—and it involves him in a dilemma from which no ingenuity or acuteness can devise relief or escape.

The meditated victory over the constitution was arrested. That sacred and venerable charter was rescued from violence.

But had it been otherwise—had the foul deed been perpetrated—had the rights, and the independence of the supreme Council of New Jersey been trodden under foot, and crushed, and scorned; nothing would have remained for me but to perform the melancholy duty of entering my *solemn protest* against unlawful usurpation on the one hand, and tame submission and servility on the other.

This I should most assuredly have done; not in my own name only—not for myself alone—but more especially in the name and on the behalf of the freemen of the county of Somerset. The voice of old Somerset should have been heard asserting the integrity of the constitution, and claiming the independence of its highest Council, had there not been one sound or echo in response.

Somerset should have remained faithful to her duty, and herself, even had she been single-handed and alone.

I did not then believe, nor do I now believe, that my own native Somerset would put her seal of condemnation on the vigorous and manly defence of the constitution and the laws.

Often has she raised her voice triumphantly in their support. Never yet has she been found recreant in her allegiance and fidelity to these. Never yet has she required her representative to become the servile respondent of power and of place.

Far, far distant be the day when such dishonour shall attach upon her unsullied name.

I do not forget, that in doing so, I should have offended past all forgiveness against that *Central influence* which arrogates to itself the exclusive government of the whigs of Somerset.

I am not unmindful that unwearied efforts have been made; and that pains, worthy of a better cause, have been taken to

secure all power and authority within that grasping and unsatisfied locality.

That immoveable selfishness, that cold-blooded calculating cupidity, that heartless insensibility and ingratitude, that arrogant assumption of dominion, which pervade the whole *conspiring cabal*, cannot but be offended with any independence of character or action. Its undisguised intention is, to rule and govern with despotic sway.

The conspirators have counted upon a manageableness and a pliability which is as foreign to the character of the freemen of the county of Somerset, as it is slavish and disgraceful. I think they mistake.

It is with pain and sorrow that I perceive there are those in that corrupt combination from whom we had a right to expect better things. These generous hopes are, I fear, blasted and gone. I have no delight to dwell on this subject. It awakens reminiscences of the morning of life, and of early and ever cherished affection; but it obtrudes comparisons and contrasts oppressive and unwelcome. An honourable name transmitted, is sometimes estimated as a rich inheritance; but sons are not always what their sires have been—the mantle of Elijah does not always find an Elisha on whom to descend.

"That darkness of character, where we can see no heart—those foldings of art through which no native affection is allowed to penetrate, present an object unamiable in every season of life, but particularly odious in youth.

"If at an age when the heart is warm, when the emotions are strong, and nature is expected to show itself free and open, a young man can already smile and deceive; what are we not to look for when he shall be longer hackneyed in the ways of men—when interest shall have completed the obduration of his heart, and experience shall have improved him in the arts of guile?

"Dissimulation in youth, is the forerunner of perfidy in old age. Its first appearance is the fatal omen of growing depravity and future shame. It degrades parts and learning—it obscures the lustre of every accomplishment. Insignificance and contempt will be the sure and merited reward."

There is one other question which arose in Council, and to which you have called my attention. It is somewhat connected with that upon which I have already animadverted. To that I will now devote a few minutes; and then close this long, and, I fear, tedious letter.

On Monday, the first day of November, 1841, the Council met at three o'clock in the afternoon, after an adjournment from the Friday preceding.

The resolution to adopt the rules of Council was passed, *ten to eight*, and by the same vote that the adjournments of which I have spoken were carried. The motion to go into joint-meeting, was then revived; and it was pressed *forthwith*, with unusual vigour. Among other reasons for immediate action, it was stated that the morrow was the day appointed by law for holding the court of appeals—that the court of appeals consisted of the governor and Council—and that if no governor should be appointed *forthwith*; there could be no court of appeals. Opposition, delay, and even doubt, were indignantly repelled. They were denounced as shutting up the court, and denying justice to suitors.

Metaphors, in liberal profusion, supplied the lack of argument; and comparisons and similes, which seemed to have no previous acquaintance, were introduced to us as almost in matrimonial alliance. Even the declaration of independence was appealed to. That far-famed state paper was invoked. Its aid was implored. The enormities of the British king were portrayed with all the energy of eloquence, and the deep feeling of the patriot.

I listened with undivided attention; but the analogy did not strike me—it was too subtle for my obscure vision.

I know that great genius does sometimes claim to itself the privilege of comparisons, which never would occur to the dull beings of mere fact and common sense.

The unrivalled master of the burlesque gives us a marked example of this, in his description of the break of day in a calm, serene, summer morning:

> "Just like a lobster boiled, the morn
> From black to red begins to turn."

The satirist made himself very merry, and he amused the gay court of the "profligate voluptuary."

The wit of Butler and the keenness of his satire have delighted the reader for near two hundred years; and his reputation is still preserved in all its freshness.

We have no right therefore to find fault with that "reciprocation of smartness" which seeks remote or even unintelligible allusions; and rejects, as unworthy those which are obvious and familiar. Nor can we tell how much of this was intended for parade and theatrical effect.

I have heard of a great actor, whose *dumb shew* was eloquence. His attitude commanded tears and almost enforced conviction.

The argument which followed this anomalous and indescribable exordium was short.

It was based upon the assumption that the vice president in

the absence of the governor cannot and shall not preside in the court of appeals; and it proceeds a step further, and insists, that it cannot be understood, that the governor is absent, when in truth none has been appointed; that absence necessarily implies a previous presence, and that there being no governor, of course there can be no court of appeals. I think I have given you the full force of the argument.

An anathema not very gentle was pronounced against all those *hereticks* who should dare to question this *ex cathedra* fulmination.

This reasoning appeared to me very unsatisfactory, and inconclusive; and I was compelled to dissent from it.

To me it appeared as a proposition self-evident, that the phrase in the constitution "absence of the governor" was meant to include every vacancy in the office, no matter how it was occasioned: and that the vice-president was required to perform the duties of the office, until that vacancy should be supplied; and that the play upon the words in the ninth section, was deceptive and hypercritical.

If we consult our great lexicographer, we shall find the word absence to be thus defined: 1. The state of being absent, as opposed to presence. 2. Non-presence. 3. Want of appearance in the legal sense. 4. Non-presence, implying previous presence. 5. Non-presence implying *no previous presence;* and in support of this last acceptation he cites as authorities Addison, Bacon, and Locke; and every person will remember a thousand instances of the familiar, and ordinary use of the word in this sense.

But on such a subject I am ashamed to act the part of a mere verbal critick.

In what sense does the *constitution* use that phrase? and how has it been *understood.*

1. In the seventh section of the constitution which has been so often quoted, it is ordained that the Council themselves shall choose a vice-president, who shall act as such in the absence of the governor.

According to the construction which is now called the whig construction, and which it is heresy to oppose, the vice-president could not and cannot preside in Council, until after a governor has been appointed, and he has taken the chair and then left it. Nay, he cannot even be elected, till these events shall have occurred. For it is contended, there can be no absence of the governor, until he shall have been present. If there cannot be a vice-president, there can be no organization of the council; and therefore, there cannot be a joint-meeting—and therefore, there cannot be a governor elected. This is an ab-

surdity. There must be a Council, and there must be an Assembly, before there can be a governor; for his appointment must emanate and proceed from these two branches of the legislature in joint-meeting.

2. The object intended to be provided for in the constitution, most unquestionably was, a vacancy in the office of governor. Should it so happen, in the course of events that the office of governor shall become vacant in any manner whatsoever, or from any cause whatsoever; then it was intended that the vice-president for the time being should succeed to his office, and perform all its duties until that vacancy should be supplied; and therefore the only wise and rational construction is in accordance with this manifest object in view.

The event had occurred, when by the terms of the constitution the vice-president of the Council, had cast upon him, by operation of law, the supreme executive power:—He was the chancellor of the state—he was captain-general, and he was ordinary.

Let me ask is not this, being the governor.

The exception depends on the subtle sophism; that a public officer may have all the powers of the governor confided to him—he may be entitled to all his emoluments and compensation—must breast all the responsibility of his station—and must endure all its toils, and yet not be governor *de facto*.—It insists that the title and not the officer shall preside in our highest court of law and equity.

I cannot for one moment imagine that our brave, and plain, and wise, and patriotic ancestors should mean the title merely and not the man. Things, objects, rights, and duties, were in their contemplation. The mere title they regarded but as the "sounding brass and the tinkling cymbal."

It is utterly absurd to say that an officer shall have the supreme executive power, and have it too by virtue of his previous office and not be governor.

It does not follow, that because he is chancellor, therefore he is the governor; and he might be the governor without having *all* the executive power, for there might be a Council to control him; but it is impossible that he can have the supreme executive power and not be the governor.

No proposition can be plainer to my mind, than that until the election of a governor, by the joint-meeting the vice-president of the Council is the governor of the state *de facto*.

The right vests in him for the time being, and it becomes his duty to exert it.

This question is not new in the state of New Jersey. It was raised; and it was settled nearly forty years ago. In the au-

tumn of 1802, the joint-meeting as I have before mentioned, was equally divided; and John Lambert the vice-president of Council took possession of the seals, and assumed the government. Opposition was then made to his authority, to hold the court of appeals, and the court of chancery: and in fine to do any other act of gubernatorial power. The opposition came from powerful sources; but it was ineffectual and abortive.

William S. Pennington, afterwards the governor of this state as before mentioned, was then a member of Council from the *county of Essex.*

The question was brought before the court of appeals, and Councillor Pennington took in it a prominent and most distinguished part. It was argued and debated with great talent, ability, and acuteness: and if tradition, and common fame, have not described the councillor's overwhelming argument, with most undue partiality; if all that is handed down to us, in relation to that celebrated debate, be not the fiction of romance, or the delusion of a dream; he must have demolished cavil, silenced contradiction, and put an end to controversy. He arrayed on the side of the constitution, the splendid genius, and wit of Frelinghuysen—the acuteness, logick, and perspicuity of Kirkpatrick—and the vast law learning of Leake; and he made them all tributaries to the truth.

He proved beyond the power of contradiction that it was the uniform and invariable practice of the ancient governors of our gallant little state; and particularly of Livingston and Paterson; on the fourth Tuesday of October annually, to deliver to the vice-president of the Council the *Great Seal of New Jersey* the emblem and symbol of their authority. The vice-president received into his hands the sacred deposit. He guarded and preserved it until the election of the governor; and at *his* inauguration returned, or delivered it, with all due solemnity, and form to him, to whom the sovereignty of New-Jersey had decreed that it should be committed.

The victory was perfect. Truth and the constitution triumphed.

A very sagacious auditor used for years afterwards to describe it, as the mighty triumph, of native mind, and masculine energy, over the technical efforts of bastard criticism and quible.

He said, the councillor brought to his mind the idea of some huge giant wielding the club of untutored power. Every blow was death.

The objection was crushed, and expired without a struggle. Peace to its ashes, was the gentle dictate of mercy and benevolence. Let them rest in quiet.

Its ghost however seems now to be raised, and it stalks about the land, to alarm the foolishly timid, or to aid the selfish views of the designing and the unworthy. I hope that *this, too*, is not another new whig principle, at this late date, introduced into our political confession of faith.

Thus, my friends, I have shown you, as I think most conclusively, that by the fair and sound interpretation of our constitution, and the comparison of its various parts each with the other, the governor's term of office is annual—that *his* year is a political year, and not a calendar year—and that it must always end with the day preceding the fourth Tuesday of October, annually.

I have been told indeed; and it was urged upon me with great earnestness, and confidence; and, as far as I can learn, it was industriously circulated, that my brethren of the bar, were one and all, opposed to my construction, and that they thought it erroneous.

I was informed by several, that Governor Williamson had given a deliberate opinion to that effect.

Governor Williamson is a sound lawyer, an able jurist, and a man of the strictest integrity and most unblemished honour.

For him I entertain the most profound respect. I more than doubted *then* the accuracy of the information. I thought it strange, marvellously strange, that he could have been induced, to put his name to a law opinion, so repugnant and contradictory, to all that he, his predecessors and successors, had ever said or done.

At an interview with him some time afterwards, I inquired if he had given such opinion, and he denied it in the most peremptory terms. He declared that he had never given to any person, the slightest authority to say that such was his opinion. I do not feel authorized to state *all* that passed in this private personal interview; but I am entirely justified in saying so much.

I have not found one, of the bar, of any standing, who has dissented from my opinion on the constitutional question: but I have met the concurrence of many.

I have great reluctance to use the language of defiance; but circumstances here justify me, and almost require it: and I am constrained to say that I do not believe there is one lawyer of reputation in New Jersey, who dare subscribe his name to an opinion differing from that which I have advanced. If there be one who thinks differently, I have not been able to find him.

I have proved to you that the vice-president of the Council in the absence of the governor, succeeds to all his duties and all his power; and that this "absence of the governor" is un-

derstood and ought to be understood as extending to, and embracing all possible cases of vacancy in the office of governor.

I have shown you that the same construction with respect to both these subjects, was from the beginning; and that every legislature and every governor have concurred in the same principle and the same rule.

It is most remarkable, that this very construction has been put upon the constitution by so many and so different persons, officers, legislators, judges, and governors, of so many and so various moulds of character and habits of thinking; and at such various and remote periods of time, and under circumstances so various and dissimilar, and that too without the slightest concert.

Here is the whig of 1776 and the gallant soldier of the Revolution. The advocate for the adoption of the federal constitution of 1787; and his jealous anti-federal opponent. The high toned federalist of the old school; and the republican disciple of Jefferson of 1800—the democrat of the war; and the jurist of peace—the Jackson republican of his day; and the national, of his—the uncompromising democrat; and the whig—all, in all the vibrations and fluctuations of party, during all the intemperate violence of party strife, amid all the throes of convulsion which have from time to time, agitated the public will—all, all agreeing at all times, with one voice, in this.

What on earth, could have brought these jarring and discordant materials, at such periods of excitement and conflict, into such perfect harmony and concord?

The answer is so obvious, that it cannot be mistaken by the honest and faithful inquirer. Truth, nothing but truth, acknowledged truth, established truth, truth which it is vain to doubt, and the madness of folly to oppose, could have produced such wonderful harmony of thought and action.

Stronger and more decisive evidence of any fact, event, or proposition, it is impossible to obtain—more, it would be the very pertness of incredulity to demand.

I am, gentlemen, with the highest
respect and esteem, your faithful
friend and obedient servant.

J. Winfield SCOTT.

Hon. James S. Nevius, William H. Lupp, and Edward Wood, Esquires.

ERRATA.

Page 4, line 15, for "*are*" read "*it is.*"
Page 10, line 30, before "the" insert "*by.*"
Page 15, line 36, for "*which*" read "*what.*"
Page 16, line 44, for "*our*" read "*one.*"

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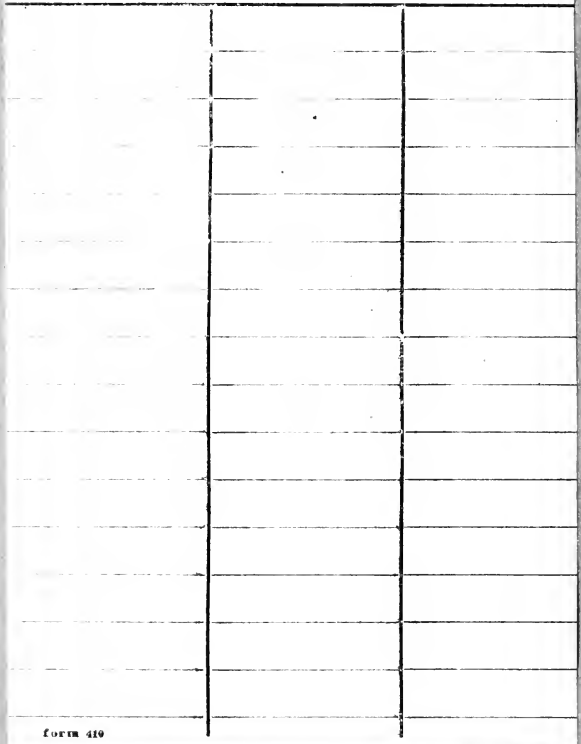

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